

DIRECTOR OF PUBLIC PROSECUTIONS

v

ROBERT CLAFFEY

<u>JUDGE:</u>	HIS HONOUR JUDGE HIGHAM
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	8, 12 July 2019
<u>DATE OF SENTENCE:</u>	18 July 2019
<u>CASE MAY BE CITED AS:</u>	DPP v Claffey
<u>MEDIUM NEUTRAL CITATION:</u>	[2019] VCC 1068

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Sentence – plea of guilty – late plea – indecent assault – representative charges – historical sexual offending against children – serious sexual offender – gross breach of trust – high moral culpability – breach of priestly authority – currently serving sentence for similar offending – general deterrence
Legislation Cited:	<i>Crimes Act 1958; Sentencing Act 1991; Sex Offenders Registration Act 2004</i>
Cases Cited:	
Sentence:	Total effective sentence of 2 years and 10 months' imprisonment; 15 months to be served cumulative to the sentence imposed by Her Honour Judge Hampel in 2016; new non-parole period of 14 years and 4 months

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Director of Public Prosecutions	Ms R Harper	Solicitor for Public Prosecutions
For the Accused	Mr A Hands	Vines Lawyers

HIS HONOUR:

- 1 Robert Claffey, you have pleaded guilty to four charges of indecent assault. The maximum penalty for indecent assault is a term of imprisonment of five years.
- 2 Tendered on the plea as Exhibit 1 was a summary of prosecution opening in which the details of your offending were set out. I annex a copy of that document to these sentencing reasons.
- 3 In brief, the circumstances of your offending were as follows.
- 4 In August 1969 you were ordained a Catholic priest. From 1981 to 1989 you were the parish priest at the church of Our Lady Help of Christians in Wendouree, Ballarat. You lived in the adjacent presbytery and had pastoral duties for the attached Catholic primary school which bore the name of the church. During the period of offending you were between 38 and 41 years of age.
- 5 Your first victim, Archer Lavarack,¹ was between 12 and 15 years of age at the time of your offending against him. He and his family were parishioners at your church. There was apparently some conflict within the family and his parents gave approval for you to begin counselling your victim, their son. In order to provide this counselling you attended on numerous occasions at the family home and the sessions took place in your victim's bedroom with the door closed. This is where all of your offending against Mr Lavarack occurred.
- 6 During the course of the sessions you deliberately created an atmosphere of intimacy, sitting close to the victim either on the bed or on the floor on a beanbag. At first you tickled Mr Lavarack, then hugged him and then kissed him on the forehead, with the admonition that your victim should love God and

¹ 'Archer Lavarack' is a pseudonym.

that you were a representative of God.

- 7 On one occasion, after the now normalised tickle and a hug, you kissed your victim on the mouth and then placed your hands down the front of his lap, rubbing your victim's penis over his clothes with the palm of your hand. This offending is the subject of charge 1, which is a representative charge.
- 8 In another counselling session, you sat next to your victim on the bed, again hugged and kissed him, and then placed your tongue into his mouth. You again rubbed the boy's penis on the outside of his clothing with your hand. This instance of offending is represented by charge 1.
- 9 On another occasion when Mr Lavarack moved away so as to avoid your kiss, you told your victim that you knew his school principal and that you could get your victim moved to another school. In consequence of this threat, your victim was scared and he later felt guilty for rejecting your advances.
- 10 On another occasion when you were tickling your victim, he moved away from you. You put your hand down the inside front of his shorts and underwear and placed your hand over the top of his penis, keeping it there for some time. This offending is the subject of charge 2, a representative charge. You told your victim how disappointed his father was in him. Your victim felt that he must have done something wrong.
- 11 On another occasion when your victim had turned his head away from you to avoid being kissed, you put your hand down his pants and underwear and held his penis. Hearing somebody in the hallway, you quickly removed your hand and began making general conversation. This instance of offending is represented by charge 2.
- 12 Not long after the above incident you told Mr Lavarack that you were going away, reminding him that your time together was "like confession and that it was a sin to tell anyone what you said to each other". You then began tickling

your victim who rolled over onto his front. As he was lying on his stomach, you put your hand on the back of his pants and then under his underwear and began rubbing your hand up and down between his buttocks. You then inserted your finger into your victim's anus which caused him immediate pain. This act of penetration is the subject of charge 3.

- 13 You impressed upon Mr Lavarack that your talks together were secret, that they were confessional and that it would be a sin to tell anyone. You added that the victim did not need to tell another priest what had been happening as you had already spoken about it. You then told the Mr Lavarack's parents that you were no longer going to have counselling sessions as you had been moved on by your parish. Mr Lavarack refused to continue attending church with his family.
- 14 Your second victim, Ryan O'Malley,² was a student at Our Lady Help of Christians Primary School in 1983 and between 6 and 7 years of age. On one occasion, Mr O'Malley and other boys were in the church preparing for an event. The other boys were sent back to class and you told Mr O'Malley to stay. You then told him, "You now have to do a penis inspection." You grabbed the front of his pants, partially pulled them down and then used your other hand to grab Mr O'Malley's penis, holding it for about one minute. Mr O'Malley was crying. You then dismissed him, telling him to go back to class. This offending is the subject of charge 4, which is a representative charge.
- 15 On another occasion, Mr O'Malley was sent to you by his classroom teacher. You took him into a room in your church, sat on a chair, pulled your victim towards you turning him around. You then placed your hand down the front of Mr O'Malley's pants and underwear, grabbing and fiddling with his penis for about 30 seconds. You then let your victim go. As Mr O'Malley walked back to class, he noticed a wet sticky substance on the side of his jumper, which he later realised was semen. This instance of offending is represented by charge

² 'Ryan O'Malley' is a pseudonym.

4.

16 When interviewed by police on 11 May 2017 in relation to these matters, you denied the offending. There was a filing hearing in November 2017 and a contested committal in June 2018 where both victims were cross-examined. Your trial was set down for 8 July 2019. The matter resolved on 4 July 2019. Your plea of guilty thus comes close to the door of the court.

17 Mr Lavarack has written a victim impact statement (Exhibit 6) in which he speaks of the significant and lifelong emotional impact your crime has had upon him. He has been unable to express his feelings and this has impacted upon his relationships in this emotional sphere. Your actions caused him shame, distress, distrust, anger and fear. Nightmares and flashbacks have been constant companions for him throughout his adult life.

18 In addition, there was the confusion as to his sexual identity; he asked himself whether he had done something to justify or attract your behaviour towards him, was he homosexual and if so, would he be further isolated from friends, family and peers?

19 Being brought up in a Catholic family, he was taught to view priests as representatives of God and of the church, and not to question their actions. Throughout his life he has blamed his parents for failing to protect him. He lost his faith in the church.

20 He concludes:

“For many years I was a broken person due to the defendant’s actions and I can confidently claim, that whilst there is further progress required, I have become empowered due to the assistance provided by those around me.”

21 Mr Lavarack’s mother wrote poignantly in her victim impact statement (Exhibit 7) about how she had four children and lost two early in their lives but effectively lost her son, your victim, since his teenage years. It is clear that one consequence of your actions against Mr Lavarack was to fracture and

irreparably damage his relationship with his parents with a sense of loss still keenly felt today.

22 Mr O'Malley has written in his victim impact statement (Exhibit 8):

"For my whole life I've had no enjoyment. There is not a day that I don't think about what happened to me. All my life, since this crime happened to me as a child, I have always woken with bad dreams.

The social impacts this crime has had on me throughout my whole life so far have been devastating. I have struggled with relationships... and have had issues relating and dealing with emotions.

I feel that the life that I have had, as a result of this crime, isn't really a life to me, it has been a sentence of no release. I am hoping I can move forward now that I have spoken up, I am hoping I will be able to move on with my wife and children and make a better future for us knowing that I have spoken up."

23 Mr Claffey, the courts are developing a greater understanding of the impact of sexual offending upon victims, particularly upon children. Whilst that impact cannot overwhelm the sentencing exercise, there can be no doubt that your offending has had a lifelong, traumatic impact upon your victims.

24 I turn now to your personal circumstances.

25 You were born on 18 February 1943 in Rainbow, Victoria and are now 76 years of age. You were between the ages of 38 and 41 at the time of your offending.

26 In 1969 you were ordained as a priest following your theological studies. Between 1969 and 1992 you were appointed to various parishes within the Ballarat Diocese. You returned to the lay community in 1994. This was no doubt due to your admitted improprieties and the cloud of allegations of sexual offending that followed you from parish to parish.

27 Through the 1990s you became the sole carer for both of your parents who each succumbed to dementia. You also began to lose your sight, suffering from a rare form of glaucoma. You are now legally blind. This has led to your loss of reading, your one great pleasure and comfort. By 2002 both your parents had passed away.

- 28 From 2002 to 2016 you threw yourself into community activities, becoming a dedicated and respected advocate for the visually impaired. Tendered on the plea as part of Exhibit 3 were letters to the court attesting to your good work, which I of course accept.
- 29 On 4 October 2016 Her Honour Judge Hampel passed a sentence on you of 18 years and 4 months for the sexual abuse of 12 children, both boys and girls, between 1969 and 1992. There were 19 charges of indecent assault; some charges encompassed penetrative sexual offending. Eleven of those charges involving seven children, six boys and one girl, related to your time as parish priest at Our Lady Help of Christians in Wendouree. Thus the offending for which you fall to be sentenced today occurred during the period of other offending against other children in your care in that same parish. Her Honour directed that you serve a period of 13 years and 4 months before being eligible for parole.
- 30 I turn now to the submissions of counsel.
- 31 Ms Harper, learned counsel on behalf the prosecution, submitted that this was serious offending in the mid to high range for offending of this nature. In relation to each victim, the offending was brazen, involved a breach of trust, and revealed a stark sense of entitlement. Accordingly, general deterrence, just punishment and denunciation were all important sentencing considerations. She accepted that the need for specific deterrence is moderated, albeit not eliminated.
- 32 She reminded me that on all four charges, you fall to be sentenced as a serious sexual offender. As such, protection of the community must be the primary sentencing purpose.
- 33 Ms Harper did not seek a longer than commensurate sentence. She accepted the need for community protection has been tempered by your advancing years.

- 34 She submitted that there was scant evidence of remorse.
- 35 She argued that there should be some cumulation on the sentence you are currently serving.
- 36 Mr Hands, learned counsel on your behalf, submitted that your offending could be viewed as mid-range. He conceded that general deterrence and denunciation would loom large in any sentencing exercise. He submitted that the need for specific deterrence was greatly reduced, if not indeed eliminated.
- 37 The last instance of offending was in 1992 and since that time you have led an apparently blameless life and have been a positive contributor to the larger community, as well as caring for your parents. Thus he submitted your prospects for rehabilitation were proven. I accept that submission.
- 38 Mr Hands submitted that had these offences been in front of Her Honour in 2016, no greater sentence would have been imposed. Thus he submitted there should be full concurrency.
- 39 He urged me to take into account the fact of delay, which I understood to be a reference to the three and a half decades that have passed between the offending and matters being reported to police. I find neither the period of time between offending and disclosure to the police, nor the progress of the prosecution to be in any way out of the ordinary. No evidence was placed in front of me to suggest that during the intervening decades, you had been adversely affected by having these unresolved matters hanging over you.
- 40 As for community protection, Mr Hands reminded me that you will be nearly 87 years old at the time of your earliest date of release.
- 41 He urged upon me the utilitarian benefit of your plea in terms of saving to the community the time and the cost of a trial. In addition, your victims have been spared the trauma of giving evidence at trial, although I note they were cross-examined at committal. I give you credit for your plea of guilty.

42 Mr Hands submitted that your plea, even though entered at a very late stage, was also evidence of some remorse. You have written a letter of apology to the court (Exhibit 5). I am prepared to accept that you now demonstrate the beginning of insight into the impact that your offending has had upon your victims.

43 I turn now to the objective gravity of the offending.

44 Crimes against children are crimes against the community's future and thus are crimes against our common humanity. Mr Claffey, your clerical collar afforded you the respect and deference of the faithful. You betrayed that trust. You used the disguise of holy orders, of the faith that you pretended to practise, not only to gain unchallenged and unquestioned access to your victims but also to secure their compliance in your crimes against them. Your priestly role provided you with various opportunities for access to your victims and, when alone with them, albeit in close proximity to other adults, you indulged your deviant desires and sexually offended against them.

45 Mr Lavarack was having trouble at home. His parents invited you into their home for the purpose of counselling. At their express invitation, their son was placed into your pastoral care. You determined to use the opportunities thereby presented to groom him and prepare him for your sexual predations. There were incremental expressions of physical intimacy as a precursor to the sexual offending to which you have pleaded guilty. You presented yourself to your victim as a man of God. You described the circumstances of his defilement as being akin to confession. You deployed the sacrament of confession to ensure your victim's silence. Your offending not only grossly abused the particular trust that had been placed in you by Mr Lavarack's parents, but mocked the priestly authority that you purported to exercise. You have stolen his faith as surely as you have taken away his innocence and childhood. The same hands that celebrated the miracle of the Eucharist at mass defiled children.

- 46 Mr O'Malley was a frightened child no older than seven years old when you offended against him. You objectified him, reduced him to a simple vehicle for your sexual gratification. Your offending against him was invasive and obviously caused your victim great distress, but his tears were to no avail.
- 47 Your offending manifested a grotesque sense of entitlement. I find that your moral culpability for this offending is high.
- 48 Charges 1, 2 and 4 are representative charges; you fall only to be sentenced for the offending captured in the charge and not the other represented instances of such offending. However, by virtue of being representative charges, you cannot claim they were isolated incidences occurring only on one occasion.
- 49 Mr Claffey, the sentencing process cannot give back to your victims that which you took from them, nor is it about retribution or revenge; nor are you to be punished for the failings of the Catholic Church. In sentencing you I must have regard to a range of different factors. I must give effect to the principle of general deterrence, that is to deter others from behaving as you did, and I must consider specific deterrence, that is deterring you from repeating such offending. I must give primacy to the need to protect the community from you. I must express the community's denunciation of your conduct. I must take into account the effect of your crimes upon your victims. I must have regard to the statutory maximum penalties for the offences to which you have pleaded guilty. I must have regard to current sentencing practices and to sentencing practices at the time of your offending in so far as they can be ascertained. I must try to balance your personal circumstances with the circumstances of your offending.
- 50 The sentence that you are currently serving reduces, in my view, the need for specific deterrence and ensures sufficient protection for the community. You do not have lineal descendants; you will not have access to children upon your eventual release. General deterrence, just punishment and denunciation are the primary sentencing considerations in your case. Even though your

offending occurred many years ago, a clear message must be sent from this court to anyone contemplating offending against children placed in their care that if you are caught and brought before the courts, even many decades later, you will be punished.

51 I am required by law to pass no longer a sentence than is necessary. I am required to sentence you as a serious sex offender on these charges. Ordinarily, that means that I would be required to impose a sentence that is cumulative upon the other sentences you are already serving. I have moderated the orders for cumulation that I would otherwise have made, having particular regard to the principle of totality.

52 In fixing the sentence, I give full effect to all of the mitigatory factors to which I have been referred. For the avoidance of doubt, I have regard to:

- i. Your age and legal blindness;
- ii. The devotion you showed in nursing your elderly parents;
- iii. In over 35 years since this offending, you have remained offence free and have made a positive contribution to the community;
- iv. Prison is more onerous for you by reason of your vision impairment than it would be for sighted prisoner.

53 Nonetheless, the objective gravity of the offending is such that it can be only met, in my view, by a significant term of imprisonment.

54 On charge 1, indecent assault, you are sentenced to a term of imprisonment of 12 months.

55 On charge 2, indecent assault, you are sentenced to a term of imprisonment of 15 months.

56 On charge 3, indecent assault, you are sentenced to a term of imprisonment of

2 years and 3 months.

57 On charge 4, indecent assault, you are sentenced to a term of imprisonment of 15 months.

58 I direct that 3 months of the sentence on charge 2 and 4 months of the sentence on charge 4 run cumulative to each other and cumulative to the sentence imposed on charge 3.

59 This makes a total effective sentence of 2 years and 10 months' imprisonment.

60 I order that 15 months of the sentence I have passed upon you today run cumulative to the sentence imposed by Her Honour Judge Hampel on 4 October 2016.

61 I further order that you must serve 14 years and 4 months before you are eligible for parole. This non-parole period takes effect from 4 October 2016, the date of Her Honour's sentence.

62 On charges 1, 2, 3 and 4, you are sentenced as a serious sexual offender and I direct that this be entered into the records of the court.

63 Pursuant to s.18(4) of the Sentencing Act 1991, I declare that you have served 15 days of the sentence I have passed upon you and direct that this be entered into the records of the court.

64 Pursuant to s.6AAA of the Sentencing Act 1991, had you not pleaded guilty, you would have been sentenced to a total effective sentence of 4 years' imprisonment, with 2 years and 9 months to run cumulative to the sentence you are currently serving.

65 Pursuant to the Sex Offenders Registration Act 2004, you again become a registrable offender and the period of registration is life. You are required to re-sign a document acknowledging that you have received your obligations.

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IN THE COUNTY COURT
AT MELBOURNE
CRIMINAL JURISDICTION

Court Reference: CR-18-01343

In the matter of Indictment No: H12186340.1

THE DIRECTOR OF PUBLIC PROSECUTIONS

-v-

ROBERT CLAFFEY

PROSECUTION PLEA OPENING

Date of Document:	5 July 2019
Served on Behalf of:	Director of Public Prosecutions
Prepared by:	Solicitors Code: 7539
JOHN CAIN	Telephone:
Solicitor for Public Prosecutions	Direct:
565 Lonsdale Street	File no:
Melbourne Vic. 3000	Reference:

The offender

1. The offender, Robert Patrick Claffey, was born on the 18th of February 1943.
2. During the period of alleged offending between 1982 and 1984 the offender was between 38 and 41 years old. He was a Catholic priest serving as Parish Priest at Our Lady Help of Christians Church³ in Gillies Street, Wendouree in Ballarat. He was Parish Priest between 1981 and 1989 and lived at the presbytery at the time of the alleged offences. He was also responsible for the attached Catholic primary school.

³ The church building of that period no longer exists.

The complainants

3. There are 2 male complainants – Archer Lavarack and Ryan O'Malley who were under the age of 16 years at the time of the alleged sexual offending and are now adults. They are unrelated.
4. Lavarack was aged between 12 and 15 years old at the time of the offences which are alleged to have occurred between 1982 and 1984. At the time his family were parishioners of Our Lady Help of Christians church.
5. O'Malley was aged between 6 and 7 at the time of the alleged offences in 1983. At the time he was a grade one student at Our Lady Help of Christians primary school.

Offending against Archer Lavarack – The first complainant

6. The first complainant grew up in Ballarat. His family were regular churchgoers and began attending at Our Lady Help of Christians Church in Wendouree when the first complainant was about 11 or 12 years old. The offender was their parish priest. At the time the family was living in Wendouree.
7. In 1982 the first complainant began secondary schooling. He was in secondary school when the events involving the offender took place. At the time the first complainant had some personal issues including conflict with his father.
8. On one occasion the offender visited the family home and, with the knowledge and approval of his parents, began to give 'counselling' to the first complainant in his bedroom.
9. The offender attended the family home on a number of occasions, ostensibly for this purpose, and spent time with the first complainant in his bedroom with the door closed.

10. In their initial sessions the offender likened their conversations to confession and said that whatever they said had to be kept secret. The first complainant thought he had a friend who would listen to him. On occasions they talked about football.
11. In their sessions, the offender would sit near the first complainant on the bed or on the floor or on a bean bag. He tickled the first complainant under the arms and on side of his body. He also hugged the first complainant and kissed him on the forehead. He said that people should love God and that he was a representative of God.
12. On one occasion the first complainant sat on a beanbag in his bedroom and the offender sat next to him on the beanbag. The offender began to tickle and hug the first complainant. He kissed the boy on the mouth and put his tongue in his mouth. Whilst kissing the first complainant the offender moved his hand down to the front of the boy's lap and rubbed the first complainant's penis on the outside of his clothing with the palm of his hand. (Goes to Charge 1 – Representative charge - Indecent Assault of a person aged under 16)
13. In another 'counselling' session, the bean bag was not in the first complainant's bedroom. The offender told the first complainant to sit on his bed which he did. The offender sat next to him on the bed and again hugged him and kissed him on the mouth and put his tongue in the first complainant's mouth. He rubbed the boy's penis on the outside of his clothing with his hand. (Goes to Charge 1 – Representative charge – Indecent Assault of a person aged under 16).
14. On another occasion on the bed when the offender leaned towards him to kiss him, the first complainant leaned backwards to avoid the kiss. The offender was annoyed and said he knew the first complainant's school principal and could get him moved. The first complainant felt very scared and later felt guilty.
15. On another occasion the offender and the first complainant were sitting on the boy's bed. The offender began to tickle him down the side of his body. The first complainant leant backwards away from the offender however the offender put his hand down the inside front of the boy's shorts and underwear and placed his hand over the top of his penis. He kept his hand there for some time then removed his hand

from the first complainant's shorts. (Goes to charge 2 – Representative charge – Indecent Assault of a person aged under 16). The offender told him how disappointed his father was with him. The first complainant felt he had done something wrong.

16. On one other occasion, during a counselling session, the offender was again in the first complainant's bedroom on the bed with him. He tickled the first complainant and leant over him and tried to kiss him but the boy turned his head away. The offender put his hand down the first complainant's pants and underwear and placed his hand around his penis, holding it. The first complainant heard someone in the hallway. The offender sat up and pulled his hand out of the boy's pants quickly and began making general conversation. (Goes to Charge 2 – Representative charge – Indecent Assault of a person aged under 16).

17. Not long after the previous incident the offender was again with the first complainant in the boy's bedroom. He told the first complainant that he was going elsewhere. The first complainant felt guilty and that he was to blame. The offender reminded the first complainant that their time together was like confession, nothing that they said to each other was going to be told to anyone else and that it was a sin to tell anyone.

18. The offender and the first complainant were both sitting on his bed. The offender began to tickle him and the first complainant rolled his body over to get away. As he was lying on his stomach, the offender put his hand on his back between his shoulder blades, holding him down. The offender put his other hand down the back of the first complainant's pants and under his underwear and began running his hand up and down between his buttocks. The offender inserted his finger into the first complainant's anus which caused immediate pain. (Charge 3 – Indecent Assault of a person aged under 16).

19. The first complainant tried to crawl forward but could not move. The offender made a sniggering noise. The boy could smell faeces and saw the offender wipe his finger with his handkerchief. The offender went to the bathroom then returned. He again told the first complainant that their talks were secret and that they were like confession and it would be a sin to tell anyone. He spoke with authority. The offender told the first

complainant that he did not need to tell another Priest what had been happening as they had already talked about it.

20. The offender left the room and told the first complainant's parents that he (the offender) was no longer going to have counselling sessions with the first complainant as he had been moved on.

21. After the counselling sessions stopped, the first complainant refused to continue attending church with his family.

Offending against Ryan O'Malley – the second complainant

22. In 1983 Ryan O'Malley was a Grade One student at Our Lady Help of Christians primary school in Wendouree and aged between 6 and 7 years old. He was living in Wendouree. The events are alleged to have occurred in 1983 and during school term.

23. The offender frequently greeted children, including the second complainant, and parents at the front of the school at the start of the school day. The second complainant went to Mass at school and the offender would 'give the Mass'.

24. On one occasion, the second complainant and other boys were in the Church preparing for an event. Afterwards the other boys were sent back to class but the second complainant was told to stay. He was standing near the altar at the front of the seating area. The offender looked at him and said "You now have to do a penis inspection". The boy froze and did not know what to do.

25. The offender grabbed the front of the second complainant's pants and partially pulled them down, using his other hand to grab the boy's penis. The offender held, squeezed and grabbed the second complainant's penis for about one minute. (Goes to charge 4 – Representative charge – Indecent Assault of a person aged under 16). The second complainant was crying. The offender told him to pull his pants up, that he was a good boy and that he could return to class.

26. On another occasion the classroom teacher told the second complainant to “go to Fr Claffey”. He did not know why he was being sent to Fr Claffey and was reluctant to go. He cried but was forced to go. The offender met him at the front of the church and took him into a room in the church. The offender sat on a chair near a desk. The offender pulled the second complainant in towards him and turned him around so that he was backed in between his legs, leaning against him. The offender put his hand down the front of the second complainant’s track pants and underwear and grabbed and fiddled with the boy’s penis for approximately 30 seconds. (Goes to Charge 4 – Representative charge – Indecent Assault of a person aged under 16). The offender then let go and allowed him to leave the office. As the second complainant was walking back to class he noticed that he had a wet, sticky substance on the side of his jumper which he later came to realise was semen.

Record of interview

27. The offender was interviewed by Police on the 11th of May 2017 and said –

Q 17, 215-38 he could not remember the first complainant

Q 16, 141 he did not remember the second complainant

Q 20-42, 153-163 he acknowledged having been the parish priest at Our Lady Help of Christians Wendouree between 1981 and 1989 and living in the presbytery in Gillies Street

Q 39 as parish priest he was responsible for the school

Q 81 he visited parishioner’s families

Q 113-14, 229-234 his work had included counselling

Q 125 denied having a role in disciplining children at school

Q 176-84 denied telling the second complainant to do a penis inspection and touching his penis

Q 201-04 said that no student was ever sent to him for anything they had done wrong

Q 244-258 denied the alleged sexual offending against the first complainant

Q 313-17 described the church as an old army hut, a Nissan hut in an L shape

CHRONOLOGY

1981-1984	Offending the subject of this indictment
23/08/2016	O’Malley first statement to police
04/10/2016	Sentenced in Geelong County Court by Her Honour Judge Hampel

	TES 18 years 4 months, NPP 13 years 4 months (PSD 15 days)
26/10/2016	Lavarack first statement to police
11/05/2017	ROI
09/11/2017	Filing hearing at Ballarat Magistrates' Court
15/12/2017	Committal mention
12/02/2018	Contested committal (did not proceed)
27/06/2018	Contested committal (1/2 day) at Geelong Magistrates' Court
24/10/2018	Initial directions hearing
02/04/2019	Final directions hearing
16/05/2019	Further final directions hearing
06/06/2019	Further final directions hearing
04/07/2019	Matter resolved
8/07/2019	Plea hearing (trial listed to commence this day)

MAXIMUM PENALTY

- Indecent assault of a person aged under 16 pursuant to s.44(1) *Crimes Act 1958 (Vic)* as amended by *Crimes (Sexual Offences) Act 1980*: 5 years imprisonment.

VICTIM IMPACT STATEMENTS

- To be advised.

s.6C SENTENCING ACT 1991 SERIOUS SEXUAL OFFENDER PROVISIONS

- The offender is to be declared a serious sexual offender on each charge for which he is sentenced to a term of imprisonment given his prior convictions.
- Pursuant to s.6D protection of the community must be regarded as the principal sentencing purpose
- The prosecution does not seek a disproportionate sentence.

SEX OFFENDER REGISTRATION PROVISIONS

- The offender is registered for life and as such no further action is required.

6AAA

- It is noted that s.6AAA applies to this matter.

Robyn Harper
Crown Prosecutor